

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DEVIN G. NUNES	:	
	:	
Plaintiff,	:	
	:	
v.	:	<u>Case 1:22-cv-01633-PKC</u>
	:	
	:	
NBCUNIVERSAL MEDIA, LLC.	:	
	:	
Defendant.	:	
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SECOND AMENDED COMPLAINT

Plaintiff, Devin G. Nunes (“Plaintiff”), by counsel, pursuant to the Court’s Minute Entry dated April 28, 2022, files the following Second Amended Complaint against Defendant, NBCUniversal Media, LLC d/b/a MSNBC (“MSNBC”).

Plaintiff seeks (a) compensatory damages and punitive damages in a total sum to be determined by the Jury, (b) prejudgment interest on the principal sum awarded by the Jury from March 18, 2021 to the date of Judgment, and (c) court costs – arising out of MSNBC’s defamation.

I. INTRODUCTION

1. Plaintiff is former Ranking Member of the House Permanent Select Committee on Intelligence (the “House Intelligence Committee”). As a United States Congressman, he was bound by the Rules of the House of Representatives, including the House Code of Official Conduct and the practices and protocols of the House Intelligence Committee. [<https://ethics.house.gov/publications/code-official-conduct>];

https://ethics.house.gov/sites/ethics.house.gov/files/documents/2008_House_Ethics_Manual.pdf].

2. On March 18, 2021, during a segment of *The Rachel Maddow Show*, MSNBC and Rachel Maddow (“Maddow”) published the following statements of fact:

No.	Statement
1	“Andriy Derkach [(“Derkach”)] is sanctioned by the U.S. government as a Russian agent. He is singled out by name by the Director of National Intelligence as someone under Vladimir Putin’s direct purview who helped run this organization targeting our election last year. Congressman Nunes accepted a package from him. What was in it?”
2	“Congressman Nunes has refused to answer questions about what he received from Andriy Derkach. He has refused to show the contents of the package to other members of the intelligence community. He has refused to hand it over to the FBI which is what you should do if you get something from somebody who is sanctioned by the U.S. as a Russian agent.”
3	“Still, the Republicans have kept Mr. Nunes on as the top Republican on the intelligence committee. How does that stand? How does that stay a thing?”

[<https://www.msnbc.com/rachel-maddow/watch/nunes-questions-laid-bare-as-trump-ear-obfuscation-lifts-on-u-s-intel-about-russia-108795973939>] (each a “Statement”, and collectively, the “Statements”)].

3. During the March 18, 2021 segment, Maddow referenced and displayed a declassified report dated March 10, 2021 published by the National Intelligence Council, entitled “*Foreign Threats to the 2020 US Federal Elections*” (the “DNI Report”). [<https://www.dni.gov/files/ODNI/documents/assessments/ICA-declass-16MAR21.pdf>].

The DNI Report, p. 3, states that Derkach and associates “sought to use prominent US persons to launder their narratives to US officials and audiences. These Russian proxies met with and provided materials to Trump administration-linked US persons to advocate

for formal investigations ... and attempted to make contact with several senior US officials”. Nowhere in the DNI Report do MSNBC’s Statements appear. For instance, the DNI Report does not state that Plaintiff accepted a package from Derkach or that Plaintiff refused to show the contents of the package to other members of the intelligence community¹ or that Plaintiff refused to hand the package over to the FBI. MSNBC’s Statements are not and cannot possibly be a report of the DNI Report.

4. Viewed as a whole and in the broader context in which they were published, the Statements falsely accuse Plaintiff of criminal conduct (obstruction of justice and treason), serious breaches of the Code of Conduct and violations of protocols concerning the handling of information that comes to the House Intelligence Committee from foreign sources such as Derkach, concealment and deception, lack of integrity, ethical improprieties, and seriously flawed and questionable judgment. MSNBC’s Statements exposed Plaintiff to public ridicule, scorn, contempt, censure and prejudiced Plaintiff in his employment as a U.S. Congressman and as Ranking Member of the House Intelligence Committee.

¹ The Intelligence Community (“IC”) is made up of “18 elements that each focus on a different aspect of our common mission”, including Air Force Intelligence, Army Intelligence and Security Command, Central Intelligence Agency, Defense Intelligence Agency, Department of Energy Office of Intelligence and Counterintelligence, Department of Homeland Security Office of Intelligence and Analysis, Department of State Bureau of Intelligence and Research, Department of Treasury Office of Intelligence & Analysis, Drug Enforcement Administration Intelligence Program, Federal Bureau of Investigation (“FBI”), Marine Corps Intelligence, National Geospatial-Intelligence Agency, National Reconnaissance Office, National Security Agency, Office of Naval Intelligence, Office of the Director of National Intelligence (“ODNI”), U.S. Coast Guard Intelligence, and U.S. Space Force. The IC is subject to oversight by several groups, including the House Intelligence Committee, “who ensure we conduct our activities within the law and in the best interests of the country.” [<https://www.intelligence.gov/how-the-ic-works>]. **The IC does not include members of the House Intelligence Committee.**

5. In addition to MSNBC's cable television subscribers and viewers, MSNBC and Maddow chose to target Plaintiff by repeating and republishing the Statements to millions via various social media properties, *e.g.*:

<https://twitter.com/MaddowBlog/status/1372745804981604354>

("How do Republicans keep Devin Nunes on as the ranking member of the Intelligence Committee given his unexplained interactions with Andriy Derkach?");²

<https://www.youtube.com/watch?v=kQZqqkNiAsA>

(Published to 4,240,000 subscribers).³

6. As intended, MSNBC's false and defamatory Statements were republished millions of times on the Internet and via social media. The Statements were immediately understood by viewers to convey a defamatory meaning, *e.g.*:

<https://www.politicususa.com/2021/03/18/rachel-maddow-devin-nunes.html>

("He has refused to show the package to members of the intelligence community. He has refused to hand it over to the FBI which is what you should do if you get something that is sanctioned by the U.S. As a Russian agent. Still, the Republicans have kept Mr. Nunes on as the top Republican on the Intelligence Committee. How does that stand? How does that stay a thing?");

<https://www.rawstory.com/nunes-intel/>

("Maddow continued, 'Congressman Nunes has refused to answer questions about what he received from Andriy Derkach. He has refused to show the contents of the package to other members of the intelligence community. He has refused to hand it over to the FBI, which is what you should do if you get something from somebody who is sanctioned by the U.S. government as a Russian agent. Still, the Republicans have kept Devin Nunes on as the top Republican on the Intelligence Committee'");

² As of May 12, 2012, the segment republished by MSNBC on Twitter via **@MaddowBlog** has been retweeted 3,067 times, quoted 266 times and liked 7,611 times.

³ As of May 12, 2022, the segment republished by MSNBC on its YouTube channel, **MSNBC**, had generated 330,104 views. The segment also generated 1,027 comments, including applause for MSNBC's Statements. Viewers, who clearly understood the defamatory meaning conveyed by the Statements, reiterated that Plaintiff had committed "TREASON"; that Plaintiff should be "thoroughly investigated" by the Department of Justice ("DOJ"); that Plaintiff was "unethical" and "immoral"; and that Plaintiff was "aiding and abetting" the enemy and belonged "in jail".

<https://twitter.com/PoliticusSarah/status/1372722157864771590>

(“Rachel Maddow just reminded Republicans that Devin Nunes is a Russian asset ... Rachel Maddow took the discussion of Rep. Devin Nunes being a Russian asset national and made the congressman and the GOP’s problems worse”);

<https://twitter.com/bratacat/status/1372727178975195139>

(“Who is protecting Devin Nunes. If I had refused to turn over a package from a known Russian agent I’d be locked up ... why is Nunes still on the Intel committee?”);

<https://twitter.com/ResisterChic/status/1372905914571882503>

(“Nunes is a National security risk!”);

<https://twitter.com/EricG1247/status/1374421374047903744>

(“Rachel Maddow EXPOSED @DevinNunes for his not-so-secret ties to Putin. It’s unacceptable for a sitting Congressman to collude with a Russian agent”);

<https://twitter.com/EricG1247/status/1372777983769939968>

(“@DevinNunes accepted a package from a foreign agent who has been sanctioned for meddling in our election. Nunes has refused to hand over the contents of the package to the @FBI”);

<https://twitter.com/EricG1247/status/1378059772403023873>

(“I can’t help but wonder what is inside the secret package Devin Nunes received from a Russian agent. It must have been pretty juicy stuff if Nunes wants to hide it from the FBI”);

<https://twitter.com/haaohaoo/status/1372749809573068803>

(“#RachelMaddow Just Reminded America That #DevinNunes Is A Russian Asset[] He has refused to show a package he has received from Russian agent #AndreiDerkach to members of the intelligence community. He has refused to hand it over to the FBI”);

<https://twitter.com/DevinCow/status/1372723092498288645>

(“#DevinNunesIsATraitor”).

7. In this case, Plaintiff seeks presumed damages, actual damages and punitive damages as a result of MSNBC’s defamation.

II. PARTIES

8. Plaintiff, Devin G. Nunes (“Nunes” or “Plaintiff”), is a citizen of California. As a member of the House Intelligence Committee, he participated in

oversight of the U.S. national security apparatus, including the intelligence-related activities of seventeen agencies, departments, and other elements of the United States Government. His office, where he performed his duties as Ranking Member of the House Intelligence Committee in 2020-2021, was located in Washington, D.C. [<https://nunes.house.gov/about/>; <https://www.devinnunes.com/bio>]. Plaintiff's career as a United States Congressman is distinguished by his honor, dedication and service to his constituents and his country, his honesty, integrity, ethics, and reputation for truthfulness and veracity. Plaintiff suffered the brunt of the harm to his reputation in the District of Columbia, where MSNBC broadcast the Statements to a vast audience of cable television subscribers and social media followers. *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 776-777 (1984) (“[f]alse statements of fact harm both the subject of the falsehood *and* the readers of the statement ... The tort of libel is generally held to occur wherever the offending material is circulated. Restatement (Second) of Torts § 577A, Comment a (1977). The reputation of the libel victim may suffer harm even in a state in which he has hitherto been anonymous. The communication of the libel may create a negative reputation among the residents of a jurisdiction where the plaintiff's previous reputation was, however small, at least unblemished.”).

9. Defendant, NBCUniversal Media, LLC, is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business in New York. NBCUniversal's sole member is NBCUniversal, LLC, a limited liability company organized under the laws of Delaware. The members of NBCUniversal, LLC are:

- (i) Comcast Navy Acquisition, LLC, a limited liability company organized under the laws of the state of Delaware (Comcast Navy Acquisition,

LLC's sole member is Comcast Corporation, which is incorporated in Pennsylvania and has its principal place of business in Philadelphia, Pennsylvania);

(ii) Comcast Navy Contribution, LLC, a limited liability company organized under the laws of the state of Delaware (Comcast Navy Contribution, LLC's members are six LLCs organized under the laws of the state of Delaware, none of whose members or ultimate owners reside in California, and a Delaware corporation with its principal place of business in Philadelphia, Pennsylvania);

(iii) NBCUniversal Enterprise, Inc., which is incorporated in Delaware and has its principal place of business in Philadelphia, Pennsylvania;

(iv) Comcast DW Holding, Inc., which is incorporated in Delaware and has its principal place of business in Philadelphia, Pennsylvania;

(v) Comcast CCW Holdings, LLC, a limited liability company organized under the laws of the state of Delaware (Comcast CCW Holdings, LLC's members are Comcast Navy Acquisition, LLC [*see above* subparagraph (i)], and Comcast Snap Holdings, Inc., a Delaware corporation with its principal place of business in Philadelphia, Pennsylvania);

(vi) Comcast Snap Holdings II, LLC, a limited liability company organized under the laws of the state of Delaware (Comcast Snap Holdings II, LLC's members are Comcast Navy Acquisition, LLC [*see above* subparagraph (i)], and Comcast Snap Holdings, Inc., a Delaware corporation with its principal place of business in Philadelphia, Pennsylvania); and

(vii) SNL Entertainment Holdings, Inc., a Delaware corporation with its principal place of business in Philadelphia, Pennsylvania.

No member of NBCUniversal or any of the entities within the above-described structures is a citizen of California. Specifically, none of the corporations are incorporated in California,

and none of the corporations have their principal place of business in California. Further, none of the limited liability companies have any members who are California citizens.⁴ NBCUniversal owns and operates “MSNBC”. Reaching more than 96 million households worldwide, MSNBC offers a full schedule of live news coverage, progressive voices, and documentary programming – 24 hours a day, 7 days a week. MSNBC delivers breaking news and information across a variety of platforms, including www.msnbc.com. MSNBC also promotes its business and causes via Twitter. MSNBC’s Twitter account, @MSNBC, has 4,100,000 followers. Maddow is the host of *The Rachel Maddow Show*, which airs weeknights at 9:00 p.m. on MSNBC. <https://www.msnbc.com/rachel-maddow-show/rachel-maddow-biography-n1157621>]. Maddow and her agents have a blog, <https://www.msnbc.com/maddowblog>, and a Twitter account with over 1,200,000 followers.

III. JURISDICTION AND VENUE

10. The United States District Court for the Southern District of New York has subject matter jurisdiction over this action pursuant to Title 28 U.S.C. § 1332 (Diversity). The parties are citizens of different States. There is complete diversity. The amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

11. MSNBC is at home in New York and is subject to general personal jurisdiction in New York.

⁴ On March 4, 2022, Plaintiff served an interrogatory on NBCUniversal limited to the citizenship of all natural persons who are its members, and, if any corporation is a member, the jurisdiction under whose laws it is incorporated and its principal place of business. On March 11, 2022, NBCUniversal answered that interrogatory. The allegations in this paragraph 8 concerning the citizenship of NBCUniversal are based on NBCUniversal’s verified interrogatory answer.

12. Venue is proper in this Court pursuant to Title 18 U.S.C. §§ 1391(b)(1) and (b)(2). MSNBC resides and is subject to personal jurisdiction in New York. A substantial part of the events or omissions giving rise to the claim occurred in New York.

IV. STATEMENT OF ADDITIONAL FACTS

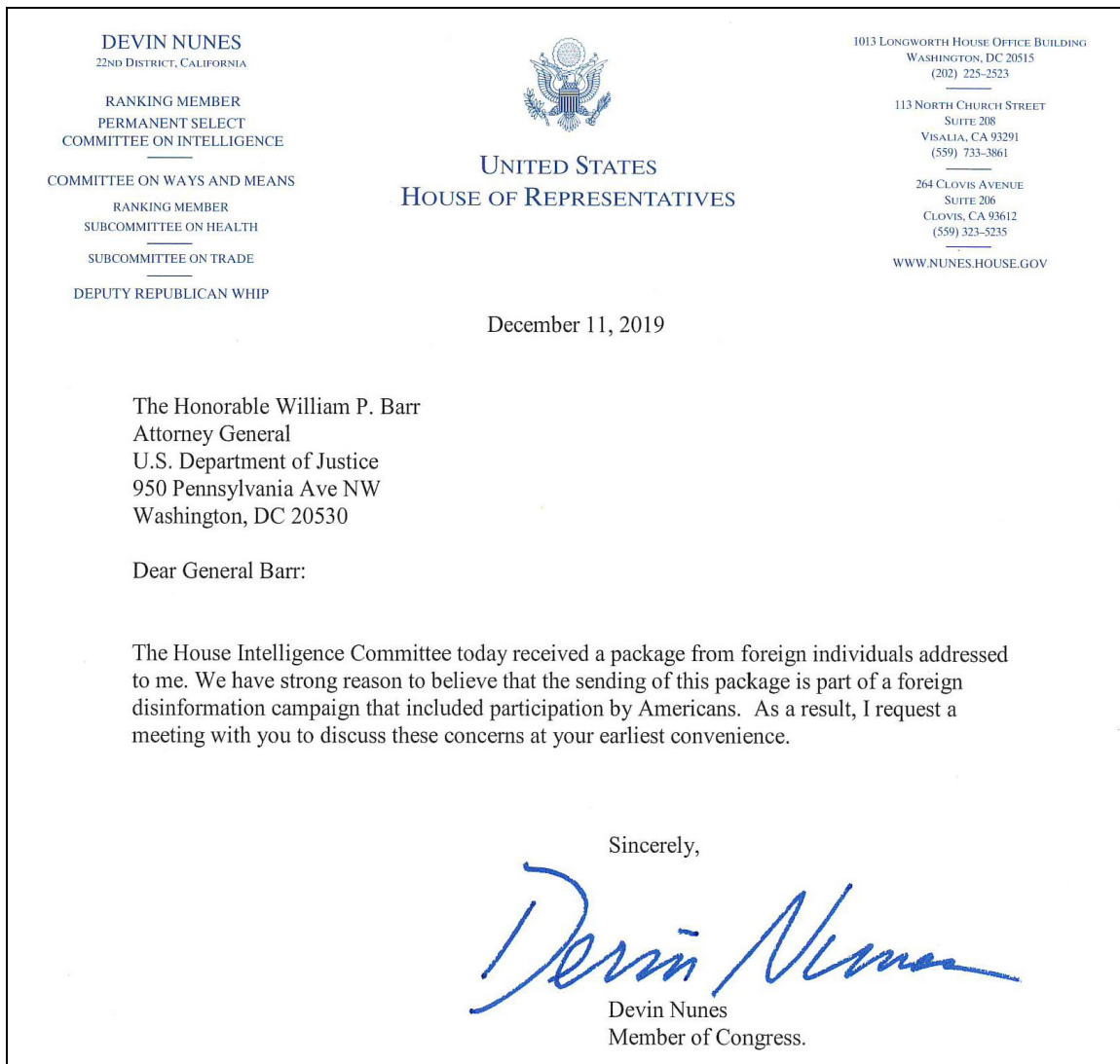
13. The Statements are materially false because:

- Plaintiff did *not* accept a package from Derkach. A package came to the House Intelligence Committee. Plaintiff did not sign for the package or handle it. Rather, the truth is that Plaintiff immediately turned the package over to the FBI and advised the Attorney General of the existence of the package, Plaintiff's concerns, and requested a meeting to discuss the matter.
- Plaintiff did *not* ever have any "unexplained interactions with Andriy Derkach".
- Plaintiff did *not* refuse to answer questions about what he received from Derkach.⁵
- Plaintiff did *not* refuse to show the package to members of the intelligence community.

⁵ On July 29, 2020, at the conclusion of a rare, open business meeting of the House Intelligence Committee, Plaintiff was confronted without notice by Democrat Sean Maloney ("Maloney"). The transcript of the meeting shows that Maloney sprung two (2) questions on Plaintiff: whether Plaintiff "received materials ... from Derkach" and, if so, whether Plaintiff "is prepared to share them with the rest of the committee". Plaintiff stated that he did not wish to respond. [*Unclassified Transcript*, pp. 19-20]. Maloney's questions had absolutely nothing to do with the business of the open meeting. Plaintiff had no obligation to respond under House Rules to the completely out-of-order, coordinated stunt. Maloney and Chairman Adam Schiff ("Schiff") knew the meeting was open and that there would be a transcript. Maloney and Schiff knew that Plaintiff would not and could not respond to the questions because any answer risked disclosing classified information. The purpose of the stunt, which was coordinated with MSNBC and other media outlets, was to manufacture evidence that Plaintiff "refused" to answer questions about the Derkach package and to report that preconceived storyline to the public. Plaintiff never "refused" to answer questions about what the House Intelligence Committee received from Derkach. MSNBC's Statements are not and cannot possibly be a fair report of the business of the House Intelligence Committee on July 29, 2020. Maloney is a well-known partisan hack, who became chairman of the Democratic Congressional Campaign Committee in December 2020. Maloney's conduct was so offensive at the meeting that HPSCI Republicans contemplated filing ethics charges.

- Plaintiff did *not* refuse to hand the package over to the FBI.
- Plaintiff did *not* violate any rule, practice, procedure or protocol or act illegally, improperly or unethically with regard to the package mailed to the House Intelligence Committee. There was no basis to remove him as Ranking Member of the House Intelligence Committee. Statement 3 above, including the rhetorical questions, were transparent accusations of wrongdoing and were clearly intended to raise questions about Plaintiff's activities and impugn Plaintiff's judgment, character and ethics.

In fact, on December 11, 2019, Plaintiff advised the Attorney General of the United States, William P. Barr, and the Criminal Division of the Department of Justice as follows:



The same day, the designated staff member in Plaintiff's office, following protocol and without the package ever being opened, sealed the package in an envelope and delivered it to the FBI. Additionally, in early January 2020, Plaintiff and top Republican staff on the House Intelligence Committee briefed the FBI on their concerns about the package.

14. Comparing MSNBC's false Statements (*e.g.*, Plaintiff "refused" to turn over the package to the FBI) to the truth (Plaintiff immediately turned over the package to the FBI and alerted the Attorney General), it is beyond peradventure that MSNBC's Statements are materially false. *Compare Nunes v. W.P. Company*, 2021 WL 3550896, at * 4 (D. D.C. 2021) ("A reasonable juror could conclude that there is a material difference between stating that Nunes had made a claim supported by evidence (that the Obama administration had undertaken intelligence activities related to individuals involved in the Trump campaign) and stating that Nunes had made a baseless claim (that the Obama administration had wiretapped Trump Tower). A reasonable juror could therefore conclude that the article was materially false because it stated that Nunes had made such a baseless claim (when he had not)."); *see also Bustos v. A&E Networks*, 646 F.3d 762, 767 (10th Cir. 2011) (Gorsuch, J.) ("Comparing the challenged defamatory statement (membership in the Aryan Brotherhood) to the truth (conspiring with and aiding and abetting the Aryan Brotherhood), we cannot see how any juror could find the difference to be a material one—that is, likely to cause a reasonable member of the general public to think significantly less favorably of Mr. Bustos").

15. Prior to the broadcast on March 18, 2021, MSNBC and Maddow knew from prior reporting and from their review of prior reporting that House Intelligence Committee Republicans had "strict procedures for screening and handling any and all

information that comes to the committee from foreign sources. If we receive a suspicious package, our standard operating procedure is to give it to the appropriate authorities without opening it and without any members seeing the contents ... That's what we do for all suspicious packages.” [<https://thefederalist.com/2020/07/29/ahead-of-election-adam-schiff-tries-to-kickstart-yet-another-russian-interference-operation/>]; <https://www.politico.com/news/2020/07/30/devin-nunes-joe-biden-ukraine-388843>

(Committee Democrats and Republicans say the typical practice when receiving parcels from foreign sources is to deliver them to the FBI for vetting)]. Indeed, during the segment on March 18, 2021, Maddow admitted that she knew the established protocol (“if you get something from somebody who is sanctioned by the U.S. as a Russian agent”, you “should” “hand it over to the FBI”).

16. Prior to the broadcast on March 18, 2021, MSNBC and Maddow also knew from their review of prior reporting that the package received from Derkach had, in fact, been given to the FBI. [<https://www.breitbart.com/politics/2020/07/29/exclusive-republicans-mull-ethics-charges-against-schiff-ally-as-democrats-turn-back-to-failed-russia-strategy/>] (“Here’s the thing: it’s standard practice that if you get a package from unknown source in a foreign country, it’s probably a good idea to call the FBI and let them handle it and not handle those packages and don’t open them and go, ‘Hey I wonder what this is? I guess it’s Christmas came early this year.’ No, **you follow the protocol, which is you turn that over to the FBI. That’s what happened.**”) (emphasis added); <https://www.politico.com/news/2020/07/30/devin-nunes-joe-biden-ukraine-388843> (same); *see also* <https://www.breitbart.com/politics/2021/03/29/house-democrat-campaign-chief-uses-intelligence-committee-perch-spread-disinformation/> (“Nunes — as

Breitbart News previously confirmed — followed proper intelligence community protocols by submitting the package without opening it to the FBI for review of its contents.”)]. Significantly, MSNBC and Maddow had no source that had told them prior to publication of the Statements that Plaintiff had “refused” to turn over the Derkach package to the FBI. MSNBC and Maddow knew that there were available sources who could have readily verified that Plaintiff turned the package over to the FBI, including Representative Rick Crawford [<https://crawford.house.gov/>], who served with Plaintiff on the House Intelligence Committee and who had been quoted in the press as affirming that Derkach’s package had, in fact, been given to the FBI. MSNBC and Maddow deliberately ignored these known sources. Their failure to contact and interview Rep. Crawford (or any other HPSCI minority member or staff) was a conscious evasion or avoidance of the truth. *Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657, 682, 692 (1989) (a clear evasion from the truth and the failure to interview an important witness, who was easily accessible, supports a finding of actual malice) (citing *Curtis Publishing Co. v. Butts*, 388 U.S. 130, 157 (1967) (“Although there was reason to question the informant’s veracity, just as there was reason to doubt Thompson’s story, the editors did not interview a witness who had the same access to the facts as the informant and did not look at films that revealed what actually happened at the game in question.”)).

17. In spite of their express knowledge, MSNBC and Maddow falsely accused Plaintiff of refusing to turn over the package to the FBI, an intentional breach of intelligence community protocol, a breach that clearly impugned Plaintiff’s character and prejudiced him in the performance of his Congressional oversight duties.

18. In fact, MSNBC and Maddow stated or insinuated that Plaintiff's misconduct was so serious that he should be removed as Ranking Member of the House Intelligence Committee and lose his clearance to classified information.

COUNT I – DEFAMATION

19. Plaintiff restates paragraphs 1 through 18 of this Second Amended Complaint, and incorporates them herein by reference.

20. MSNBC made, published and republished numerous false factual Statements of and concerning Plaintiff. These false Statements are detailed verbatim above. MSNBC and Maddow published the false Statements without privilege of any kind.

21. The Statements constitute defamation. The Statements accuse and impute to Plaintiff (a) one or more crimes, including obstruction of justice and treason, and (b) an unfitness to perform the duties of an office or employment for profit, or the want of integrity in the discharge of the duties of such office or employment, including violation of the House Rules and Code of Conduct, breach of duty and protocol, serious lapse in judgment, deception, lack of ethics, lack of integrity and lack of veracity. The Statements also prejudiced Plaintiff in his profession and employment as a United States Congressman and as Ranking Member of the House Intelligence Committee.

22. By broadcasting the Statements to MSNBC's cable television viewers, subscribers and advertisers, by tweeting the Statements to over 5,300,000 followers on Twitter, and by broadcasting them on YouTube to MSNBC's 4,240,000 subscribers, MSNBC knew or should have known that the Statements would be republished over and over by third-parties to Plaintiff's detriment. Republication by MSNBC and Maddow's

followers, mainstream media, and users of Twitter was the natural and probable consequence of MSNBC's actions and was actually and/or presumptively authorized by MSNBC. In addition to its original publications, MSNBC is liable for the millions of third-party republications of the false and defamatory Statements under the republication rule.

23. MSNBC's false and defamatory Statements harmed Plaintiff and his reputation, causing presumed damages and actual damages.

24. Prior to filing this action, Plaintiff served on MSNBC and Maddow at the place of publication a written notice specifying the Statements that are defamatory and demanding, *inter alia*, that those statements be retracted and/or corrected and removed from the Internet. MSNBC and Maddow failed to retract and correct the false and defamatory Statements.

25. MSNBC published the defamatory Statements with actual knowledge that they were false or with reckless disregard for whether they were false. MSNBC acted with actual malice and reckless disregard for the truth for the following reasons:

a. During the broadcast on March 18, 2021, MSNBC provided no source for the defamatory Statements about Plaintiff because, in truth, Maddow fabricated the Statements, including the story that Plaintiff "refused" to turn over the package to the FBI. The events described by Maddow never occurred. The Statements were a product of Maddow's imagination. She made them up out of whole cloth in order to impute intentional wrongdoing to Plaintiff. Although Maddow made it appear as if she had direct knowledge of facts, she did not have one shred of evidence to support the Statements. *St. Amant v. Thompson*, 390 U.S. 727, 732 (1968) ("The finder of fact must

determine whether the publication was indeed made in good faith. Professions of good faith will be unlikely to prove persuasive, for example, where a story is fabricated by the defendant, [or] is the product of his imagination”); *ExpertConnect, LLC v. Fowler*, 2020 WL 3961004, at * 3 (S.D.N.Y. 2020) (plaintiff alleged that the defendants “‘engaged in a concerted effort to deliberately disparage the business reputations of Fowler, Parmar, and Straflence with false statements’ that they had committed a serious crime and were under investigation. These statements were made ‘with full knowledge of their falsity’ because ‘[t]here has never been any criminal action commenced against Fowler or Parmar, no investigation of any sort and, to be sure, no allegations of criminal conduct.’”); *Watson v. NY Doe 1*, 2020 WL 635843, at * 7 (S.D.N.Y. 2020) (“This is a case where the alleged false statements were allegedly based on the direct knowledge of the alleged defamer that the plaintiff alleges is false. A fair inference from the Complaint is that NY Doe 2 knew that the plaintiff did not rape her but falsely made that accusation. Those circumstances are sufficient to infer actual or constitutional malice on the part of NY Doe 2 because she is alleged to have firsthand knowledge of whether the plaintiff did or did not rape her.”); *Romeo and Juliette Laser Hair Removal, Inc. v. Assara I, LLC*, 2016 WL 81525, at * 9 (S.D.N.Y. 2016) (“Because the defendants created fictitious experiences to undermine Romeo & Juliette’s business, the plaintiff has shown that the statements were made with actual malice” – summary granted in favor of plaintiff on its claim of defamation); *see also Novagold Resources, Inc. v. J Capital Research USA LLC*, 2022 WL 900604, at * 9 (E.D.N.Y. 2022) (plaintiff sufficiently alleged actual malice where the complaint stated that “the claims made in the [defendant’s] Report are readily contradicted by public documents”); *Schermerhorn v. Rosenberg*, 73 A.D.2d 276, 426

N.Y.S.2d 274, 285 (1980) (“we hold that the publication of Senator Beatty’s defamatory charge, itself fabricated by the defendants [a newspaper and its reporter] and known by them to be false, supports the libel award on the third cause of action”).

b. Prior to publication on March 18, 2021, MSNBC and Maddow knew that the package had, in fact, been turned over to the FBI. MSNBC producers and Maddow reviewed publicly available media reports that confirmed the package had been turned over to the FBI. From their review of the March 10, 2021 DNI Report, MSNBC and Maddow also knew that there was no indication from the intelligence community that the package had been withheld from anyone, including the IC, or handled improperly by anyone. MSNBC and Maddow published the false Statements in spite of their actual knowledge of the truth.

c. MSNBC and Maddow purposefully evaded the truth. They chose not to interview important witnesses who were easily accessible, including Rep. Crawford. MSNBC and Maddow knew that Rep. Crawford had positively stated that the package had been given to the FBI per protocol. MSNBC and Maddow deliberately ignored those who could disprove the scandalous allegations of treason, obstruction and unethical practices, even while admitting that they had no sources.

d. The Statements that the Ranking Member of the House Intelligence Committee and Medal of Freedom recipient would “refuse” to show the contents of a package he “accepted” from a known “Russian agent” to members of the intelligence community *and* “refuse” to turn over the package to the FBI are so inherently improbable that only a reckless person would have put the Statements in circulation. MSNBC and Maddow knew or should have known that the Statements were untrue, and

recklessly published them with actual malice. *See Zuckerbrot v. Lande*, 2022 WL 816807, at * 16 (N.Y. Sup. 2022) (defendant levelled “inherently improbable” claim that “Zuckerbrot and her family dispatched ‘people’ to follow, intimidate, and potentially ‘physically harm’ her.”); *US Dominion, Inc. v. Powell*, 554 F.Supp.3d 42, 63 (D. D.C. 2021) (“a reasonable juror could conclude that the existence of a vast international conspiracy that is ignored by the government but proven by a spreadsheet on an internet blog is so inherently improbable that only a reckless man would believe it.”); *Butowsky v. Folkenflik*, 2019 WL 3712026, at * 11 (E.D. Tex. 2019) (“Folkenflik departed from journalistic standards and repeated words and phrases that he knew were false or inherently improbable – phrases such as ‘Russian collusion’. Folkenflik abandoned common sense. The suggestion that the President of the United States and/or the ‘Russians’ (Vladimir Putin) would have colluded with Butowsky – a person unknown to either the President or Putin and with whom neither the President nor Putin has ever communicated – is preposterous.”).

e. MSNBC and Maddow had a pre-determined agenda, their commitment to which led them to publish the Statements about Plaintiff that they either knew to be false or that they published with reckless disregard as to whether the Statements were false. *Palin v. New York Times Company*, 940 F.3d 804, 813 (2nd Cir. 2019). MSNBC’s false Statements were part of a Democratic Party operation run on March 18, 2021. MSNBC and Maddow manufactured and broadcast the false narrative about Plaintiff in direct response to House Resolution 243 and in order to distract from the controversy surrounding Democrat Eric Swalwell’s (“Swalwell”) relationships with the Chinese Communist Party (“CCP”) and a Chinese political operative named Christine

Fang a/k/a Fang Fang. On March 18, 2021, House Minority Leader, Kevin McCarthy, introduced H.R. 243, a bill to remove Swalwell from the House Intelligence Committee because of his ties to Communist China. In an afternoon speech on the House floor, McCarthy stated, “I want all members to ask this one question: Should a member who can’t get a security clearance in the private sector sit on the House Intelligence Committee?” After McCarthy introduced H.R. 243, MSNBC and agents of Maddow worked throughout the day to concoct a narrative to counter or blunt the impact of H.R. 243. The March 18, 2021 segment of *The Rachel Maddow Show*, which aired at 9:00 p.m., was pure disinformation broadcast for a knowingly improper purpose. *See Speed v. Northwest Airline, Inc.*, 2000 WL 34030833, at * 8 (N.D. Iowa. 2000) (overruling defendant’s motion to dismiss under Rule 12(b)(6), where the statements, viewed in the light most favorable to the plaintiff, “were made with malice in that Defendants’ intent was to inhibit [plaintiff] from pursuing legal action”).

f. MSNBC and Maddow harbor an institutional hostility, hatred, extreme bias, spite and ill-will towards Plaintiff due to Plaintiff’s emergence as the most prominent skeptic in Congress of Maddow’s marquee news narrative from 2017 to 2019: that the Trump campaign colluded with Russians to hack the 2016 presidential elections. This bias and prejudice motivated MSNBC and Maddow to publish the intentionally false Statements about Plaintiff. As evidenced by the words Maddow chose and the timing and tenor of the publications on March 18, 2021, MSNBC and Maddow intended to inflict harm through knowing or reckless falsehoods. *Don King Productions, Inc. v. Walt Disney Co.*, 40 So.3d 40, 45 (Fla. 4th DCA 2010) (“[a]n intention to portray a public figure in a negative light, even when motivated by ill will or evil intent, is not sufficient

to show actual malice unless the publisher intended to inflict harm through knowing or reckless falsehood.”) (citing *Garrison v. Louisiana*, 379 U.S. 64, 73 (1964)); *Cochran v. Indianapolis Newspapers, Inc.*, 175 Ind.App. 548, 372 N.E.2d 1211, 1221 (1978) (evidence of ill will creates jury question on actual malice where “[t]here are no facts or statements of record which even remotely support” the defamatory implication at issue). The animus towards Plaintiff and the baseless attacks on him continue to be reflected in story after story published by MSNBC and its agents, and are part of a pattern and practice on the part of MSNBC and particularly Maddow of inflicting harm through knowing or reckless falsehoods. [E.g., <https://www.msnbc.com/opinion/potential-trump-indictment-would-still-leave-crimes-unpunished-n1267485> (“Trump had plenty of enablers both inside and outside the government ... For the first two years of the Trump presidency, there were no serious investigations into potential malfeasance in office, and some powerful committee chairs such as Rep. Devin Nunes, R-Calif., colluded with the White House to give advance information about where investigations were headed.”); <https://www.msnbc.com/transcripts/transcript-all-chris-hayes-7-15-21-n1274208> (“He [Trump] wanted the military to massacre the protesters. And then he got rid of the guy who didn’t want to do that, wouldn’t do it, and then he started replacing the top leadership of the department defense with Trump loyalists, people who had no business doing the jobs they were doing, former White House staffer and aide to Congressman Devin Nunes. One who most notable for crafting a dubious memo denounced by the FBI to discredit the origins of the investigation into Trump team’s contacts with Russia.”)].

g. MSNBC and Maddow intentionally abandoned all journalistic standards and integrity in broadcasting, publishing and republishing the Statements.

They did not seek the truth or report it. They betrayed the truth for the sake of their institutional bias against Plaintiff and ratings. Rather than minimize harm, MSNBC and Maddow set out to inflict maximum pain and suffering on Plaintiff in order to harm Plaintiff's reputation. MSNBC and Maddow broadcast and published the Statements in the broadest manner possible, to television, Internet and social media audiences, for the sole purpose of injuring Plaintiff's reputation. They refuse to be accountable; refuse to acknowledge their mistakes; and, of course, refuse to apologize. As a sure sign of their actual malice, MSNBC and Maddow did not even bother to contact Plaintiff for comment prior to publication. *Project Veritas v. New York Times*, Case 63921/2020 (Westchester County Mar. 18, 2021) (Opinion & Order, p. 13) (one of the reasons the New York Times was guilty of actual malice was that it intentionally declined to seek comment from the plaintiff prior to publication, which "blatantly violated NYT's own published policies and ethical guidelines").

26. As a direct result of MSNBC's defamation, Plaintiff suffered presumed damages and actual damages, including, but not limited to, insult, pain, embarrassment, humiliation, mental suffering, injury to his reputation, costs and other out-of-pocket expenses, in a sum to be determined by the Jury.

Plaintiff alleges the foregoing based upon personal knowledge, public statements of others, and records in his possession. Plaintiff believes that substantial additional evidentiary support, which is in the exclusive possession of MSNBC and Maddow, their agents and other third-parties, will exist for the allegations and claims set forth above after a reasonable opportunity for discovery.

Plaintiff reserves his right to amend this Complaint upon discovery of additional instances of MSNBC's wrongdoing.

CONCLUSION AND REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court to enter Judgment against MSNBC as follows:

- A. Compensatory damages in an amount to be determined by the Jury;
- B. Punitive damages in an amount to be determined by the Jury;
- C. Prejudgment interest on the principal sum awarded by the Jury at the maximum rate allowed by law;
- D. Postjudgment interest at the maximum rate allowed by law;
- E. Costs and other recoverable amounts as allowed by law;
- F. Such other relief as is just and proper.

TRIAL BY JURY IS DEMANDED

DATED: May 12, 2022

Signature of Counsel on Next Page

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CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2022 a copy of the foregoing was filed electronically using the Court's CM/ECF system, which will send notice of electronic filing to counsel for the Defendant and all interested parties receiving notices via CM/ECF.

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